83-2152

SUPREME COURT
OF THE UNITED STATES

_____ TERM, 1984

NO:

HECTOR MANSO AND SUSAN WARDEN,
PETITIONERS

VS.

STATE OF LOUISIANA
RESPONDENTS

PETITION FOR A WRIT
OF CERTIORARI TO THE SUPREME
COURT OF THE STATE OF LOUISIANA

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QUESTIONS PRESENTED

1. Whether a search warrant founded on a supporting affidavit which contains no allegation by an informant or the affiant that contraband is located at the premises to be searched can, as a matter of law, support a finding of probable cause under the "totality of circumstances" test first enunciated in Illinois v. Gates, ____ U.S. _____, 103 S. Ct. 2317 (1983).

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PETITION FOR A WRIT
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COURT OF THE STATE OF LOUISIANA

Walter L. Sentenn, Jr., on behalf of Hector Manso and Susan Warden, petitions for a Writ of Certiorari to review the judgment of the Supreme Court of the State of Louisiana in this case.

OPINIONS BELOW

The opinion of the Louisiana Supreme Court, No. 82-KA-2244 affir-

ming the District Court's judgment appears in Appendix A; it is reported at 449 So. 2d 480. The official notice of the Louisiana Supreme Court's denial of petitioner's Application for Rehearing appears in Appendix B and is reported at 449 So. 2d 480. The Judgment of the District Court denying petitioner's Motion to Suppress Physical Evidence appears in Appendix C; it is not reported.

JURISDICTION

1. The judgment of the Louisiana Supreme Court (App. A) was entered on April 2, 1984. A timely application for rehearing was denied on May 3, 1984 (App. B); the judgment became final as of the date the application for rehearing was denied (App. B).

2. The federal question was initially raised as indicated at p. 7, infra.

3. The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourth Amendment to the United States Constitution provides in pertinent part as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

Petitioners were arrested on September 8, 1981 and were charged with three felony violations of the Louisiana Statutes relative

to possession of cocaine and other controlled dangerous substances. Petitioners filed in the District Court a Motion to Suppress the evidence to be used against them. This motion was submitted without an evidentiary hearing, and was subsequently denied without assigned reasons by the District Judge.

Pursuant to Louisiana procedure, the petitioners then entered pleas of guilty to one of the charges each with an express reservation of their rights to appeal the denial of their pre-plea Motion to Suppress. Hector Manso was sentenced to twelve years at hard labor; petitioner Susan Warden

was sentenced to three years at hard labor.

The sole issue on the appeal was whether the affidavit used to support a search warrant for motel rooms registered in Manso's name set forth sufficient facts to constitute a legitimate finding of probable cause.

The search warrant and affidavit (App. D, infra, pp. 33a-35a) in question was issued to search two adjoining motel rooms registered in the name of Hector Manso and located in Slidell, Louisiana.

On April 2, 1984 the Louisiana Supreme Court rendered its decision, affirming the denial of petitioners' Motion to Suppress. The Majority's Opinion, (App. A., infra, pp. 1a-12a) relied on Illinois v Gates, ____, U.S. _____, 103 S. Ct. 23]7 (]983)

and its use of a totality of the circumstances analysis to hold that "a practical, common-sense decision would recognize a "fair probability" that contraband would be found. . . . Hence, we find that the magistrate had a 'substantial basis for concluding that probable cause existed."' (App. A. infra, pp. 11a).

Petitioners have argued that the Louisiana Supreme Court erred in its application of the totality of the circumstances test, or, in the alternative in adopting the Gates principles to a factual context wherein there is no unidentified tipster mentioned in the affidavit, or any tip at all, that criminal activity is occurring.

How Federal Questions Were Raised and Passed Upon Below

Petitoners alleged, at the earliest opportunity, a violation of their rights under the U.S. Constitution in the Motion to Suppress the Evidence (R.p. 3) filed in the District Court November 20, 1981. This motion was denied by the District Court on April 5, 1982 (R. 29), (App. C., infra). The denial of petitioners' Motion to Suppress was specifically assigned as error following their timely Motion to Appeal to the Supreme Court (R.p.31, p. 38).

Petitioners' rights under the Amendment of the United States Constitution was specifically discussed by the Louisiana Supreme Court in its Majority Opinion (App. A, infra, pp. 5a-6a).

REASONS FOR GRANTING THE WRIT

1. Petitioners herein urge that the Writ be granted because the opinion of the Louisiana Supreme Court at issue represents the first adoption and application by the highest court of Louisiana of the "totality of the circumstances" test. If, as petitioners' contend, the Louisiana Court has misread, misinterpreted and misapplied Gates the first time it has considered it, the lower courts and judicial officers ofLouisiana will fall into error in its consideration of search warrants. As a result, the citizens' Fourth Amendment rights will be seriously violated. But if, as this Court stated in Gates, there are still "limits beyond which a magistrate may not venture in issuing a warrant"

Illinois v. Gates, ____U.S.____, p. 2332), then the present case provides a clear-cut opportunity for this Court to reaffirm and define the limits and standards, inherent in the words 'probable cause,' that an affidavit must still provide some specific factual information inferring first hand knowledge by the affiant or an informer that there is contraband to be found; and further, that the mere sworn allegations that a subject has engaged in prior criminal activity is no enough.

2. The Decision Below Conflicts with This Court's Decisions. Petitioners further suggest that the Writ should be accepted because the Louisiana Supreme Court's application of the Gates test and the Louisiana Supreme Court's

use of the test in this matter conflict with Federal case law and with the standard of probable cause enunciated and reaffirmed in Gates, supra, itself.

In Illinois v. Gates, supra, this Court itself stated that ". . .a mere conclusory statement that gives the magistrate virtually no basis at all for making a judgment regarding probable cause" is "inadequate". Illinois v. Gates, ____ U.S._____, 103 S. Ct. 2317 (1983). This Court further admonished that ". . .courts must continue to conscientiously review the sufficiency of affidavits on which warrants are issued." Illinois v. Gates, supra, p. 2332. Petitioners urge that the Louisiana Supreme Court failed to do just this. Rather, the Majority has

merely ratified, without any independent analysis, the issuing magistrate's acceptance of the affiants' conclusion that contraband was present. They overlooked, as did the District Judge, the critical distinction between the Gates affidavit and the present affidavit: nowhere in the affidavit (App. D, infra) is there an allegation by an informer anonymous or identified, that Manso was presently engaged in criminal activity. Nor is there any factual basis, allegations, or observation by the affiants that they have observed criminal conduct or evidence of contraband in the motel rooms sought to be searched. In the Gates case however, there were

very specific predictions of past and future behavior.

3. The Decision of the Court Below Conflicts with Federal Appellate Decisions. Subsequent to the Supreme Court's enunciation of the totality of the circumstances test in Gates, several Federal circuit appellate courts have also had the opportuntiy to consider and apply the test. In U.S. v. Kolodziej, 712 F. 2d 975 (5th Cir. 1983), for example the Fifth Circuit on a petition for rehearing following the issuance of Gates reaffirmed its holding that the affidavit at issue was insufficient to establish probable cause. The affadavit related allegations by three named co-conspirators that the defendant, Kolodziej, was their major drug supplier,

that they had paid him between $500,000.00 and $1,000,000.00 in the last year, and an allegation by one of the informants that Kolodziej kept large sums of money earned in narcotic transactions in the trunk of his vehicle to avoid detection. In rejecting the governments contention that the affidavit was sufficient, the Fifth Circuit stated: "...Like the District Court, we read this tip as providing nothing more than a conclusion that the defendant had engaged in, and was engaging in criminal conduct." U.S. v. Kolodziej, p. 977.

In U.S. v. Algie, 721 F. 2d 1039 (6th Cir. 1983) the Court rejected evidence obtained from a pen register of fifteen phone

calls from a known bookmaking operation to the defendant's number. Although the affiant had also sworn that repeated phone calls are the common method of operation of bookmakers, the Court stated that this evidence raised only a mere suspicion which was "insufficient to establish any fair probablility that contraband...would be found on the property..." Id., p. 1043

In Re Grand Jury Proceedings, 716 F. 2d 493 (8th Cir. 1983) is another example of the continuing reluctance of the Federal Appellate Courts to interpret Gates as a relaxation of the traditional requirement that an affidavit contain specific information and details upon which the judiciary can base a finding of probable

cause. As was stated by the 8th Circuit in that case:

> It is true that a determination of probable cause depends upon a reading of the affidavit as a whole. Illinois v. Gates, supra, ____U.S. at _____, 103 S. Ct. at 2332. But in the instant case the affidavit as a whole consists of nothing more than a stringing together of what appears to be vague and unsupported rumors, suspicions, and bare conclusions of others.
> Id., p. 502

That Illinois v. Gates should not be interpreted as a relaxation of traditional concepts of probable cause was also noted by a panel of the Eleventh Circuit in U.S v. Sorrells, 714 F. 2d 1522 (11th Cir. 1983) wherein the following caution was given:

> We do not however, recommend or endorse omissions in the affidavit of the informant's credibility or reliability. The test in Aguilar has served many useful purposes aside from insuring that

> the constitutional rights of the citizens be respected. It has given to law enforcement officers, prosecuting attorneys and the court a straightforward test for resolving disputes over the issuance of a warrant. We do not view Gates as an endorsement of slovenly or careless law enforcement work. Such work will continue to produce problems for the prosecution, the defense and the courts engaged in a case by case analysis rather than a repair to certain and definite rules. The Court in Gates stated that Aguilar has provided guidance in determining the existence of probable cause and it is not anticipated that departure from these guidelines will be looked upon with favor. Id. p. 1528

As these decisions, as well as the reaffirmation of Nathanson v. United States, 290 U.S. 41, 54 S. Ct. 11, 78 L. Ed. 159 (1933) and Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed 723 (1964) itself, indicate, the 'totality of the circumstances' test, properly applied and analysed, still requires that the affidavit must

present to the magistrate [s]ufficient information . . . to allow that official to determine probable cause . . . ." Illinois V. Gates, supra, p. 2332. A mere repetition of rumors, suspicions and bare conclusions are not enough. In Re Grand Jury Proceedings supra, p. 502.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Appendix A

SUPREME COURT OF LOUISIANA

NO: 82-KA-2244

STATE OF LOUISIANA

VS.

HECTOR MANSO AND
SUSAN WARDEN

APPEAL FROM THE TWENTY-SECOND
JUDICIAL DISTRICT COURT
PARISH OF ST. TAMMANY,
STATE OF LOUISIANA

HONORABLE JAMES R. STRAIN,
JUDGE

MARCUS, Justice

Hector Manso and Susan Warden were charged in the same information with one count of possession with intent to distribute cocaine in violation of La. R.S. 40:967(A)(1), one count of possession of methaqualone in violation of La. R.S. 40:967 (C) and one count of possession of diazepam

in violation of La. R.S. 40:969 (C). Defendants entered pleas of not guilty to all three counts. The trial judge denied defendants' motion to suppress which had been submitted on memoranda. Thereafter, pursuant to a plea bargain, Manso entered a plea of guilty to possession with intent to distribute cocaine and Warden entered a plea of guilty to possession of methaqualone. The other two counts were nol prossed as to each defendant. Defendants expressly reserved their right to appeal the court's denial of their pre-plea motion to suppress.[1] Subsequently, Manso was sentenced to serve twelve years at hard labor and to pay a fine of $5,000, or in default thereof, to serve one year at hard labor; Warden was sentenced to serve three years at hard labor. On appeal, defendants rely on one assignment

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1. State v. Crosby, 338 So. 2d 584 (La. 1976).

of error for reversal of their convictions and sentences.[2]

Defendants contend the trial judge erred in denying their motion to suppress evidence seized from a motel room pursuant to a search warrant. They argue that the affidavit supporting issuance of the search warrant failed to set forth facts demonstrating probable cause to believe that illegal drugs were in the motel room.

The search warrant in question was issued to search two adjoining motel rooms rented in the name of Hector Manso, rooms 212 and 214 of the Holiday Inn on Interstate 10 and Gause Blvd. in Slidell. Its purpose was to seize cocaine, marijuana, methaqualone and associated paraphernalia and documents. It was issued

---

2. Manso contends in a second assignment of error that his sentence is illegal. He argues that his sentence of twelve years is in excess of the statutory maximum of ten years. However, as provided by La. R.S. 40:967 (B)(1), the penalty for possession with intent to distribute cocaine in violation of La. R.S. 40:967 (A)(1) is imprisonment at hard labor for up to thirty years. Hence, this assignment of error is without merit.

based upon facts recited in an affidavit by Officers Freddy Drennan, Stan Hughes and Lynn Bertaut.

The affidavit states in full:

> That on Saturday, September 5, 1981, Hector E. Manso w/m 4500 I10 Service Road Metairie, La. a subject known to have trafficked in narcotics, was found to have rented rooms 212 and 214 of the Holiday Inn in Slidell, La. and was in fact staying in both rooms that are adjoining. Subject was observed to be accompanied by one white male and one white female.
>
> The investigation began because of Hector Manso's known past narcotic activities. Investigating officers contacted the Jefferson Parish Sheriff's Office and spoke with Agent Dexter Accardo releative [sic] to his investigations releating [sic] to the narcotic arrest of Hector Manso on 12-10-80 and 6-17-81 for possession with the intent to distribute cocaine, marijuana and methaquaalone [sic]. Agent Accardo advised the investigating officers of Manso's method of operation while under investigation in Jefferson Parish. These met the exact method

of operation now being observed by the investigating officers. These activities include the use of two adjoining motel rooms to traffic narcotics, numerous incoming and outgoing telephone calls, and awaits a narcotics delivery to be made to his person and to then distribute the narcotics from the rented motel room. This knowledge was gained from undercover operations as well as from overt surveliances [sic] conducted by the Jefferson Parish Sheriff's Office and releated [sic] to the investi gating officers.

Affiants on this warrant have maintained a continuous surveillance [sic] of Hector Manso and have observed the same activities as described to the affiant's [sic] by agent Dexter Accardo.

On the basis of the facts described herein affiant's [sic] request a search warrant to be issued for the above described premises.

Constitutional provisions insure a person from an unreasonable search and seizure of his house, papers and effects. No such search or seizure shall be made except

upon a warrant issued upon probable cause, supported by an oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. U.S. Const. Amend. IV; La. Const. art. 1,§5. Comformably, our Code of Criminal Procedure in art. 162 provides in pertinent part:

> A search warrant may issue only upon probable cause established to the satisfaction of the judge, by the affidavit of a credible person, reciting facts establishing the cause for issuance of the warrant.

We have held that probable cause exists when the facts and circumstances within the affiant's knowledge, and of which he has reasonably trustworthy information, are sufficient to justify a man of reasonable caution to believe that an offense has been committed.

The judicial officer must be supplied with enough information to support an independent judgment that probable cause exists for the issuance of a warrant. State v. Hughes, 433 So. 2d 88 (La. 1983); State v. Mena, 399 So. 2d 149 (La. 1981).

Prior to the United States Supreme Court's decision in Illinois v. Gates, _____ U.S._____, 103 S. Ct. 2317 (1983), courts mechanically followed the "two-pronged" test of Aguilar v. Texas, 378 U.S. 108 (1964) and Spinelli v. United States, 393 U.S. 410 (1969), to determine whether an affidavit containing hearsay has established probable cause. Under this test, the affiant was required to articulate facts relating to the informant's "basis of knowledge" and his "veracity" or "reliability."

In Gates, supra, the United States Supreme Court abandoned an inflexible application of this test in favor of a "totality of the circumstances analysis." However, although the informant's "veracity" or "reliability" and his "basis of knowledge" are no longer controlling, they are still relevant factors in the totality of the circumstances examination The Court summarized its holding as follows:

> [W]e conclude that it is wiser to abandon the "two-pronged test". . . .In its place we reaffirm the totality of the circumstances analysis that traditionally has informed probable cause determinations. . . .The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband ...will be found in a particular place.

> And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for ...conclu[ding] that probable cause existed."

In addition, the court reaffirmed its policy on review of search warrant affidavits. It stated that in light of the fact that affidavits "are normally drafted by nonlawyers in the midst and haste of a criminal investigation [, t]echnical requirements of elaborate specificity...have no proper place."
Also, "a magistrate's determination of probable cause should be paid great deference by reviewing courts."

In the instant case, the affidavit states that the Slidell police officer affiants have maintained a continuous surveillance of Manso. On Saturday, September

5, 1981, Manso rented two adjoining motel rooms in Slidell. Because of the affiants' familiarity with Manso's narcotics activity, they contacted a named Jefferson Parish agent about the agent's experience with Manso. The agent told the affiants about Manso's arrest three and nine months earlier for narcotics trafficking. They were also informed that Jefferson Parish undercover operations and overt surveillance leading to these arrests established Manso's method of operation as follows:

> the use of two adjoining motel rooms to traffic narcotics, numerous incoming and outgoing telephone calls, and awaits a narcotics delivery to be made to his person and to then distribute the narcotics from the rented motel room.

The Slidell affiants then informed the magistrate that they were now

observing these "same activities" and this "exact method of operation" by Manso. In essence, the magistrate was informed that Manso's peculiar modus operandi, which had indicated narcotics activity on two previous occasions, was being repeated in Slidell. The information concerning Manso's previous conduct was supplied to the affiants by a reliable source (police officer). Based on the totality of these circumstances, a practical, common-sense decision would recognize a "fair probablity" that contraband would be found in Manso's motel rooms. Hence, we find that the magistrate had

a "substantial basis for concluding that probable cause existed." Accordingly, since the affidavit in support of the search warrant sets forth facts demonstrating probable cause to believe that illegal drugs would be found in the rooms, the trial judge correctly denied defendants' motion to suppress.

DECREE

For the reasons assigned, defendants' convictions and sentences are affirmed.

DIXON, C.J. concurs.

CALOGERO,J., dissents and assigns reasons

DENNIS, J., dissents with reasons.

CALOGERO, Justice, dissenting.

I respectfully dissent.

No search or seizure shall be made except upon a warrant issued upon probable cause, supported by an oath of affirmation, and particularly describing the place to be searched and the persons or things to be seized. U.S. Const., Amend. IV; La. Const. 1974, Art. 1, §5, La. C.Cr.P. art. 162. Probable cause exists when the facts and circumstances within the affiant's knowledge, and of which he has reasonably trustworthy information, are sufficient unto themselves to warrant a man of reasonable caution to believe that an offense has been committed and that the evidence or contraband may be found at the place to be searched. State v. Lewis, 427 So. 2d 835, 839 (La. 1982); State v. Duncan, 420

So. 2d 1105, 1108 (La. 1982); State v. Johnson, 408 So. 2d 1280, 1283 (La. 1982); State v. Mena, 399 So. 2d 149, 151 (La. 1981). The judicial officer must be supplied with enough information to support an independent judgment that probable cause exists for issuance of a warrant. Mena, supra. It is fundamental that an affidavit upon which a search warrant is based must inform the issuing magistrate of underlying facts sufficient to support a determination that evidence of a crime is presently on the premises to be searched. State v. Loehr, 355 So. 2d 925 (La. 1978); State v. Paciera, 290 So. 2d 681 (La. 1974).

The affidavit in this case is based in large part upon hearsay information. In determining whether

such an affidavit establishes probable cause for issuance of a warrant this Court has applied the "two prong test" established in Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L.Ed. 2d 723 (1964); State v. Paciera, 290 So. 2d 681 (La. 1974). Under this test the magistrate must be informed of the basis of the informant's knowledge and must be supplied with information which shows either the inherent credibility of the informant or the reliability of the information on this particular occasion. Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969).

However, in Illinois v. Gates, ____ U.S. ____, 103 S. Ct. 2317 (1983), the United States Supreme Court recently substituted for

the Aguilar "two prong test" a ". . . totality of the circumstances analysis that traditionally has informed probable cause determinations . Gates, supra at 2332. Notwithstanding this, the Gates majority acknowledged that "an informant's 'veracity', 'reliability' and 'basis of knowledge' are all highly relevant in determining the value of his report." Id. at 2327. Thus, the Court explained:

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. Id. at 2332.

The circumstances set forth by the affidavit in the instant case include the following: Defendant had been arrested twice within the prior nine months for possession with intent to distribute. The activities associated with his other arrests included renting adjoining motel rooms (from which narcotics were presumably delivered and distributed) and placing and receiving numerous phone calls. The only factual allegation about defendant Manso's activities urged upon the magistrate in support of the sought warrant is that he had again rented two adjoining motel rooms and was accompanied by another man and a woman. The affidavit does not say that investigating officers observed any overt criminal activity. Nor did they

assert in the affidavit that they had been told by an informant that narcotics had been observed or would be found at the Slidell Holiday Inn. Essentially the affidavit recites informer information relative to activities preceding the two prior arrests and affiant information concerning ongoing activities at the Slidell Holiay Inn.

The case for issuance of the warrant is an ostensibly logical inference that narcotics violations are likely ongoing at the Slidell Holiday Inn since on prior occasions narcotic violations were found to have existed in Jefferson Parish on the heels of activities similar to those at the Slidell Holiday Inn. Given specific recitation of observed facts, by the informer Accardo relative to the two prior

incidents, and by the affiants investigating defendant's activities at the Slidell Holiday Inn, the magistrate might well have been in a position to draw the logical inference which would support issuance of the warrant. Nonetheless, because of the affidavit's deficiencies, i.e., lack of specificity, and the conclusory nature of affiants' statements and the statements ascribed to the informant Accardo, I do not agree that it can support a magistrate's independent judgment that probable cause exists.

An affidavit must recite facts, not simply conclusions, and the facts which establish probable cause must appear within the four corners of the affidavit. C.Cr.P. art. 162; State v. Poree, 406 So. 2d 546, 547 (La. 1981). It

is the magistrate's function to examine the facts and determine whether probable cause exists. State v. Brannon, 414 So. 2d 335 (La. 1982). Thus, the magistrate should have been informed of more specific facts relating to the previous investigations, as well as more facts observed during this latest surveillance. A determination of whether the "method of operation" was the same should have been made by the magistrate after he had been informed of sufficient facts to enable him to make such a determination.

In the affidavit "Agent Accardo advised the investigating officers of Manso's method of operation while under investigation in Jefferson Parish." Note that what's asserted here is that Accardo told affiants

how Manso operated, not the specifics of what was observed concerning Manso's activities and/or by whom he was observed. Further, the affidavit says that "these met the exact method of operation now being observed by the investigating officers." Note that the specific activity observed by affiants (in Slidell) is not recited here. The affidavit thereupon goes on to recite the respective methods of operation ("these activities include the use of two adjoining motel rooms to traffic narcotics, numerous incoming and outgoing telephone calls, and awaits narcotics delivery to be made to his person and to then distribute the narcotics from the rented motel room.") Yet there is no assertion, as relates to either the prior arrests or

the ongoing situation, that specific criminal activities of this nature were seen by any identified person or persons, be it Accordo relative to the prior arrests or affiants during the ongoing investigation. "This knowledge was gained from undercover operations as well as from overt surveillances conducted by the Jefferson Parish sheriff's office and related to the investigating officers." Note that the affiants are not reciting what Accardo told them he observed in Jefferson Parish nor what they, the affiants, had personally observed in Slidell. Their recitation could just as well, or perhaps even more logically be, that this information was supplied them by others, unidentified.

What the affiants recite here about their knowledge is sufficient to arouse their own legitimate suspicions. However, "unsupported suspicions are not sufficient to constitute probable cause for issuance of a search warrant." State v. Boksham, 370 So. 2d 491, 497 (La. 1979).

In Illinois v. Gates, supra, at 2327-2328, the United States Supreme Court did not entirely dispense with the usefulness of the Aguilar "two prong test." The present affidavit clearly falls far short under the Aguilar "two prong test" standard. Conceding

that the informant, Officer Accardo, was credible, there is still a major problem with the information supplied by him. In particular, the affidavit does not tell us of Accardo's basis of knowledge, nor is his information given in sufficient detail. The recitation supports, at least as well as a possible direct observation on Accardo's part, hearsay furnished him and/or gathered by him from other sources. To the extent that the Aguilar "two prong test" is still "useful" under the United States Supreme Court's current Gates standard, its utility is to negate rather than support probable cause.

Furthermore, in applying the Gates totality of circumstances analysis this case falls far short

of establishing probable cause. In Gates the unverified anonymous tipster gave very specific information about the activities of Gates and his wife. They were partially predictive in nature (Gates and his wife separately would be going down to Florida, etc.) and the details of the prediction were corroborated by an exhaustive surveillance by the officers, from Chicago to Florida, and back to Chicago.[1] In the case under consideration the circumstances for the magistrate's consideration consist exclusively of the recitations contained in the affidavit and discussed herinabove. It did not include specific observations of criminal

conduct nor specifically recited confirmatory surveillances.

The essential problem in this case is that the affiant police officers did not supply sufficient particular information, other than conclusory assertions, to support a magistrate's independent judgment that probable cause existed for issuance of the warrant.

For the foregoing reasons I respectfully dissent.

* * *

---

1. Gates involved a search conducted after police received an anonymous letter informing them that Gates and his wife Sue were selling drugs from their suburban Chicago residence. The letter stated that the two purchased their drugs in Florida. The wife would drive the car to Florida where it would be loaded with drugs and the husband would fly to Florida and drive the car back to Illinois while the wife flew hom. The letter continued that the wife would be driving to Florida on May 3 and the husband flying there a few days later. Police investigation revealed that an Illinois driver's license had been issued to one Lance Gates who resided at the address given in the letter. Further investigation showed that L. Gates had made reservations fora May 5 flight to West Palm Beach, Florida. Police observed Gates board the flight and federal agents in Florida saw him arrive and take a taxi to a nearby motel where he went to a room registered to a Susan Gates. The following morning Gates and a woman left the motel driving a car with Illinois license plates. The plates were registered toa car owned by Gates, but not the car being driven at that time. Gates drove northbound on an interstate frequently used by travelers to the Chicago area. The police set forth the above facts in an affidavit, accompanied by the anonymous letter, and requested a search warrant for the Gates'

home and car which the judge issued. The Court found that the affidavit set forth sufficient probable cause for the issuance of the warrant. The Court noted that independent police investigation corroborated much of the information in the letter.

APPENDIX B

May 3, 1984

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Covington, La. 70433

Re: State of Louisiana vs.
Hector Manso and
Susan Warden
No. 82-KA-2244

Dear Counsel:

Enclosed please find a News Release documenting this court's denial of the application for rehearing, in the above entitled referenced case.

This judgment is now final. By copy of this letter we are advising the trial court of the finality of this case and instructing them to do whatever is necessary to implement the judgment.

With kindest regards, I remain,

Very truly yours,

s/Frans J. Labranche, Jr.

FRANS J. LABRANCHE, JR.
CLERK OF COURT

FJLJr/rd

CCS: Hon. James R. Strain
Hon. Lucy Reid Rausch

SUPREME COURT OF LOUISIANA
NEW ORLEANS, LA. 70112

FOR IMMEDIATE NEWS RELEASE

FROM: CLERK OF SUPREME COURT
OF LOUISIANA

On the 3rd day of May, 1984, the following action was taken by the Supreme Court of Louisiana, composed of Chief Justice John A. Dixon, Jr., and Associate Justices Pascal F. Calogero, Jr., Walter F. Marcus, Jr., James L. Dennis, Fred A. Blanche, Jr., Jack Crozier Watson, and Harry T. Lemmon, in the cases listed below:

REHEARINGS DENIED:

82-KA-2244 State v. Hector Manso and Susan Warden, CALOGERO and DENNIS, J.J. would grant a rehearing.

APPENDIX C

93297

St. of La. v.
Hector Manso-
Pedro Gutierrez, et al

Motion to Suppress is hereby overruled & denied.

s/James R. Strain, Judge

April 5, 1982

APPENDIX D

State of Louisiana
Parish of St. Tammany

SEARCH WARRANT

TO: The within named affiant or any other qualified law enforcement officer of officers:

On this day Lt. Freddy Drennan, Sgt. Stan Hughes, Sgt. Lynn Bertaut, affiant, having subscribed and sworn to an affidavit for a Search Warrant, and I having under oath examined affiant, am satisfied that probable cause exists:

THEREFORE, IN THE NAME OF THE PEOPLE OF THE STATE OF LOUISIANA, I order and command that you search during the day and night, Sundays and Holidays, continuing through the night or next day, the following described place:

ROOMS 212 AND 214 OF THE HOLIDAY INN LOCATED ON THE INTERSTATE SERVICE ROAD OF GAUSE BLVD. AND INTERSTATE 10. BOTH ROOMS ARE RENTED IN THE NAME OF HECTOR MANSO, 4500 I 10 SERVICE ROAD METAIRIE, LA.

and to seize, secure, tabulate and make return according to law the following property and things:

COCAINE, MARIJUANA, METHAQUALONE, PARAPHANALLIA USED IN THE WEIGHING, PACKAGING, DISTRIBUTING, ADULTERATING AND HANDLING OF SAME: ALSO DOCUMENTS USED IN THE RECEIVING AND DISTRIBU-

TING OF THE AFORE MENTIONED NARCOTICS.

The following facts having been sworn to by affiant in support of the issuance of this Warrant:

THAT ON SATURDAY SEPTEMBER 5, 1981, HECTOR E. MANSO W/M 4500 I 10 SERVICE ROAD METAIRIE, LA. A SUBJECT KNOWN TO HAVE TRAFFICKED IN NARCOTICS, WAS FOUND TO HAVE RENTED ROOMS 212 and 214 OF THE HOLIDAY INN IN SLIDELL, LA. AND WAS IN FACT STAYING IN BOTH ROOMS THAT ARE ADJOINING. SUBJECT WAS OBSERVED TO BE ACOMPANIED BY ONE WHITE MALE AND ONE WHITE FEMALE.

THE INVESTIGATION BEGAN BECAUSE OF HECTOR MANSO'S KNOWN PAST NARCOTIC ACTIVITIES. INVESTIGATING OFFICERS CONTACTED THE JEFFERSON PARISH SHERIFF'S OFFICE AND SPOKE WITH AGENT DEXTER ACCARDO RELEATIVE TO HIS INVESTIGATIONS RELEATING TO THE NARCOTIC ARREST OF HECTOR MANSO ON 12-10-80 AND 6-17-81 FOR POSSESSION WITH THE INTENT TO DISTRIBUTE COCAINE, MARIJUANA AND METHAQUAALONE. AGENT ACCARDO ADVISED THE INVESTIGATING OFFICERS OF MANSO'S METHOD OF OPERATION WHILE UNDER INVESTIGATION IN JEFFERSON PARISH. THESE MET THE EXACT METHOD OF OPERATION NOW BEING OBSERVED BY THE INVESTIGATING OFFICERS. THESE ACTIVITIES INCLUDE THE USE OF TWO ADJOINING MOTEL ROOMS TO TRAFFIC NARCOTICS, NUMEROUS INCOMING AND OUTGOING TELEPHONE

CALLS, AND AWAITS A NARCOTICS DELIVERY TO BE MADE TO HIS PERSON AND TO THEN DISTRIBUTE THE NARCOTICS FROM THE RENTED MOTEL ROOM. THIS KNOWLEDGE WAS GAINED FROM UNDERCOVER OPERATIONS AS WELL AS FROM OVERT SURVELLIANCES CONDUCTED BY THE JEFERSON PARISH SHERIFF'S OFFICE AND RELEATED TO THE INVESTIGATING OFFICERS.

AFFIANTS ON THIS WARRANT HAVE MAINTAINED A CONTINOUS SURVELLANCE OF HECTOR MANSO AND HAVE OBSSERVED THE SAME ACTIVITIES AS DESCRIBED TO THE AFFIANT'S BY AGENT DEXTER ACCARDO.

ON THE BASIS OF THE FACTS DESCRIBED HEREIN AFFIANT'S REQUEST A SEARCH WARRANT TO BE ISSUED FOR THE ABOVE DESCRIBED PREMISES.

s/ Lt. Freddy Drennan, Sgt. Stan Hughes, Sgt. L. Bertaut

ISSUED UNDER MY HAND THIS 7th day of September, 1981 at 11:11 P.M.

S/ John Green

Judge of 22nd Judicial District Court
Parish of St. Tammany
State of Louisiana